

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CURTIS DWAYNE HOLBROOK,)	
Plaintiff,)	Civil Action No. 7:19cv00327
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
VIRGINIA DEPT. OF CORR.,)	By: Michael F. Urbanski
Defendant.)	Chief United States District Judge

Curtis Dwayne Holbrook, a Virginia inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983, challenging the calculation of his sentence. Holbrook alleges that the Virginia Department of Corrections “added [his] time up wrong,” and he seeks time credit toward his sentence. The court finds that Holbrook’s claim is not cognizable in a § 1983 action and, therefore, will dismiss this action.

“When a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.” Preiser v. Rodriguez, 411 U.S. 475, 500 (1973), see generally, Wilkinson v. Dotson, 544 U.S. 74, 78-82 (2005) (summarizing the distinctions between § 1983 and habeas actions). Because Holbrook only challenges the calculation of his sentence and only seeks credit toward his sentence, the court finds that his claim is not cognizable in a § 1983 action. Accordingly, the court will dismiss this action for failing to state a claim pursuant to 28 U.S.C. § 1915A(b)(1).¹

ENTER: This 6th day of May, 2019.

/s/ Michael F. Urbanski

Chief United States District Judge

¹ The court notes that this dismissal is without prejudice to Holbrook’s opportunity to raise his claim in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, after he has exhausted state court remedies.